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9 Attorneys for Plaintiff
BitTorrent, Inc.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

14 BITTORRENT, INC., a California
corporation,

15 Plaintiff,

16 v.

17 BITTORRENT MARKETING GMBH, a
18 limited liability company organized under the
laws of Germany,

19 Defendant.
20

Case No. CV 12-2525 EJD

**REQUEST FOR ENTRY OF DEFAULT
AGAINST DEFENDANT BITTORRENT
MARKETING GMBH**

21
22 **TO THE CLERK:**

23 Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Civil Local Rule 77-2,
24 plaintiff Bittorrent, Inc. ("Plaintiff") hereby requests that the Clerk of this Court enter a default in
25 this matter against defendant Bittorrent Marketing GMBH ("Defendant") on the ground that said
26 defendant has failed to appear or otherwise respond to the Complaint within the time prescribed
27 by Federal Rule of Civil Procedure 12(a)(1) and the Orders of this Court.
28

1 The complaint in this action was filed on May 16, 2012. Dkt. 1. The following day,
 2 Cooley LLP contacted Legal Language Services (“LLS”) to begin translating the complaint and
 3 accompanying materials into German and to take the necessary steps to effect service of process
 4 in Germany on Defendant under the provisions of the *Hague Convention of 15 November 1965 on*
 5 *the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (the
 6 “Hague Convention”). Declaration of John Paul Oleksiuk (“Oleksiuk Decl.,” filed herewith) ¶ 2.

7 Plaintiff attempted to complete service upon Defendant at its registered address with a
 8 request under the Hague Convention to the relevant Central Authority in Germany three times
 9 since the Complaint was filed. *Id.* ¶ 3. Each time, Defendant appealed service at the relevant
 10 court in Germany. *Id.* Each appeal was refused, and the German court hearing the appeal decided
 11 that service should be completed. *Id.*

12 However, service was not effected in each case because Defendant changed its address
 13 while the request under the Hague Convention was pending. *Id.* ¶ 4. Defendant has now had no
 14 fewer than four different registered addresses since the start of this lawsuit. *Id.* On February 28,
 15 2014, Plaintiff learned that Defendant’s most recent registered address is Dornhofstraße 34,
 16 63263 Neu-Isenburg, Germany. *Id.*

17 On October 29, 2013, the Court ordered that Plaintiff may effect substituted service
 18 personally upon German counsel for Defendant, Christoph Hoppe, of the Summons and
 19 Complaint, and other related court documents, in both English and German (collectively, the
 20 “Initiating Documents”), at the known address for Mr. Hoppe. *See* Order on Bittorrent, Inc.’s
 21 Administrative Motion for Substituted Service of Summons and Complaint, Dkt. 28 (“Order
 22 Permitting Substituted Service”); Oleksiuk Decl. ¶ 5.

23 Though the Order Permitting Substituted Service did not require that delivery of the
 24 Initiating Documents to Mr. Hoppe occur under the *Hague Convention of 15 November 1965 on*
 25 *the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (the
 26 “Hague Convention”), Plaintiff first attempted to complete substituted service by delivery of the
 27 Initiating Documents to Mr. Hoppe using the Hague Convention procedures. Oleksiuk Decl. ¶ 6.
 28

1 By request to the Central Authority for Düsseldorf dated November 5, 2013, Plaintiff requested
2 service under the Hague Convention of the Initiating Documents upon Defendant via delivery to
3 Mr. Hoppe. *Id.*

4 On December 4, 2013, the Court granted Plaintiff's Administrative Motion for an
5 Extension of Time to Complete Service of Summons and Complaint and ordered that Plaintiff
6 shall have until March 2, 2014 to complete service of the Initiating Documents. Order on
7 BitTorrent, Inc.'s Administrative Motion for Extension of Time to Complete Service of Summons
8 and Complaint and Extension of Associated Case Management Deadlines, Dkt. 31; Oleksiuk
9 Decl. ¶ 7.

10 On January 3, 2014, Plaintiff learned that its request to the relevant German authorities to
11 arrange for delivery of the Initiating Documents to Hoppe under the Hague Convention was
12 declined because Hoppe had not made an appearance for Defendant in this case. Oleksiuk Decl.
13 ¶ 8.

14 On January 17, 2014, Plaintiff sent the Initiating Documents, via FedEx Overnight Mail,
15 to Mr. Hoppe in accordance with the Order Permitting Substituted Service. *See* Proof of Service,
16 Dkt. 32; Oleksiuk Decl. ¶ 9. The Initiating Documents were delivered to Mr. Hoppe on January
17 20, 2014, as evidenced by the Proof of Service of Summons and accompanying Proof of Delivery
18 filed with this Court on January 29, 2014. *See* Dkt. No. 32; Oleksiuk Decl. ¶ 10. Plaintiff's
19 delivery of the Initiating Documents was therefore timely completed before the Court's deadline
20 of March 2, 2014. On January 21, 2014, the Initiating Documents were also emailed by Plaintiff
21 to Mr. Hoppe. Oleksiuk Decl. ¶ 11.

22 Consequently, Defendant's responsive pleading was due on February 10, 2014. *See* Dkt.
23 28 and 31 (orders requiring Defendant to answer or otherwise move in response to the Complaint
24 within twenty-one (21) days of delivery of the Summons and Complaint and related documents to
25 German counsel Christoph Hoppe, and extending the deadline for Plaintiff to complete service);
26 Oleksiuk Decl. ¶¶ 5, 12. Defendant, however, has failed to file or serve an answer or other
27 responsive pleading and has not otherwise appeared to contest this action. Oleksiuk Decl. ¶ 13.
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1 Defendant, being a corporate entity, is not a minor, an incompetent person, or in the
2 military service. *Id.* ¶ 14. Because the Defendant against whom a judgment for affirmative relief
3 is sought has failed to plead or otherwise defend, and that failure is shown by the Oleksiuk Decl.
4 and by the Docket in this proceeding, the Clerk is respectfully requested to enter the Defendant's
5 default pursuant to Fed. R. Civ. P. 55(a).

6 Dated: April 8, 2014

COOLEY LLP

7
8 /s/ John W. Crittenden

9 John W. Crittenden (101634)

10 Attorneys for Plaintiff BitTorrent, Inc.
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